

The complaint

Mr and Mrs J complain about Fairmead Insurance Limited's handling of a claim they've made on a legal expenses insurance policy.

Fairmead outsources a separate business to handle and administer claims on Mr and Mrs J's legal expenses insurance policy. Where I refer to Fairmead within this decision, this includes this representative acting on its behalf.

While the policy is held jointly, almost all of the contact with Fairmead has been from Mr J. Where I refer in my decision to Mr J, this should be taken to include Mrs J where relevant.

What happened

Mr and Mrs J hold a legal expenses insurance policy with Fairmead. Since 2018, they've been in a dispute with a neighbour over a boundary and alleged trespass. They made a claim on the policy seeking to take legal action against the neighbour.

Fairmead agreed cover for the claim and solicitors were appointed to act on Mr and Mrs J's behalf. Since 2018, Mr and Mrs J have made a number of complaints to both our service and the solicitors (who I'll refer to as Firm D) about the conduct of the claim and the solicitors.

Our service previously issued a final decision (which wasn't accepted by Mr and Mrs J) which said in part that it would only consider the conduct of Fairmead up to October 2021. Any matters after that date would be subject of a further complaint. Mr and Mrs J made a new complaint to Fairmead, and then our service.

Mr and Mrs J complained that their request to change solicitors hadn't been agreed by Fairmead. Our investigator thought Fairmead's actions in response to this request were reasonable but that there had been a lack of communication and delays to the request. She said Fairmead should pay £250 compensation to Mr and Mrs J.

Fairmead didn't accept this. It referred to our previous decision which said it had handled the claim appropriately and Mr and Mrs J had received the benefit of the insurance policy during the time when their request was being considered and reviewed.

Mr and Mrs J also disagreed with our investigator. They said the poor handling of the claim had had a very significant impact on them, including their daughter being unable to attend her first choice of school.

As neither party agreed with our investigator, Mr and Mrs J's complaint has come to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first thing I need to clarify is the extent of this decision. I'm going to decide whether

Fairmead handled the claim appropriately between October 2021 (when the previous complaint was referred to our service) and June 2022 (when Fairmead issued its final response to Mr and Mrs J's most recent complaint). This means I won't be looking at the claim in its entirety from 2018 onwards, or making an assessment of Fairmead's actions before October 2021.

I also won't be commenting on how Firm D has acted. They are solicitors, acting on behalf of Mr and Mrs J, with their costs paid by Fairmead. Our service doesn't have jurisdiction over Firm D. Mr and Mrs J have made complaints to Firm D and I'm aware they've been directed to the Legal Ombudsman if they're unhappy with the responses to those complaints.

An ombudsman at our service made a previous final decision which addressed both of those points. He explicitly referred to a subsequent complaint which had been made, but not responded to, at the time of his decision. That's the complaint I'm considering here. I cannot, and will not, be addressing points previously looked into again in this decision.

In October 2021, I can see from notes of contact between Fairmead and Mr J that he was deeply unhappy with the way Firm D had handled the claim and wanted to appoint alternative solicitors. In March 2022, Fairmead agreed it would appoint different solicitors, subject to a report being received from Firm D confirming that Mr and Mrs J's claim enjoyed reasonable prospects of success. In May 2022 that report was received but the conclusion of Firm D was that the claim no longer enjoyed such prospects.

Fairmead has said it will obtain a counsel's opinion into whether Mr and Mrs J's claim enjoys reasonable prospects of success, and provide counsel with the evidence which has been obtained to date and has been relied on by Firm D in its assessment. If that assessment is positive, it will agree to the appointment of new solicitors to take on the claim.

I'm satisfied that's a reasonable response. There's no benefit in appointing, and Fairmead covering the costs of, new solicitors if the claim doesn't have a reasonable chance of being successful. It's a condition of the policy that the claim has such prospects for cover to be in place on an ongoing basis. The claim had previously been assessed as having such prospects, but on the basis of recent evidence obtained, Firm D concluded it no longer did.

It's reasonable for an insurer to withdraw cover (and cease funding legal proceedings) in the event that the prospects of success reduce to less than 51%. I think Fairmead's position that it will seek a counsel's opinion on the prospects of success is fair. It isn't withdrawing cover but offering for an independent review of the prospects of success, as it's well known to both parties that Mr and Mrs J don't believe they'd get fair treatment from Firm D.

From October 2021 onwards, Fairmead was in contact with Firm D about the progress of the claim and the current situation with the dispute between Mr and Mrs J and their neighbour. There were several occasions on which Fairmead chased Firm D for updates and information.

These continued from March 2022 when Fairmead had agreed, in principle, to appoint alternative solicitors. To do so, it said it needed a claims management report (CMR) from Firm D, detailing the prospects of success and other information. That information was chased on multiple occasions until it was received in May 2022. That resulted in the prospects assessment and actions I've previously outlined.

I do acknowledge that Fairmead chased Firm D a number of times before requested information was received. I also note from correspondence between Firm D and Mr J that during that time, Firm D was continuing to act on the case and obtain evidence relating to the dispute, so Mr and Mrs J were receiving the benefit of the policy (as Fairmead covered

the costs related to those actions) at a time when it now appears the prospects of success had reduced (and so cover for those costs wouldn't ordinarily have been in place). The CMR which was eventually completed placed a great deal of weight on a report which was in Firm D's possession in October 2021. So it seems that the knowledge of the diminished prospects of success could have been known about in, or shortly after, October 2021. Mr and Mrs J continued to receive the benefit of the insurance policy (by having Firm D's costs paid) well beyond that date.

Fairmead can't dispute it knew Mr and Mrs J were greatly dissatisfied with the way Firm D was handling the case, and also Fairmead's general handling of the claim. Despite this, it seems that contact was only made with Firm D to chase updates, information or the CMR were only made after Mr J contacted Fairmead to ask for an update or express his dissatisfaction. It seems that dates when Firm D said it would update Fairmead, or provide information, would pass but there'd be no action taken by Fairmead to chase what was required.

I've noted a number of occasions on which Mr J was told he'd receive an update by a certain date, but this date would pass without any update coming from Fairmead (or being received by Fairmead from Firm D) and no contact would be made with Mr J until he next contacted it to chase an update. The handling of the claim seems to have been reactive, rather than pro-active. There was little managing of Mr and Mrs J's expectations, and when their expectations weren't met, no pro-active update or explanation was offered by Fairmead.

I don't seek to diminish or under-estimate the distress felt by Mr and Mrs J. They've detailed the impact it's had on them, and their daughter's education in particular. It seems to me however that this arises in the main because the boundary dispute and alleged trespass remains unresolved, and their unhappiness with the way Firm D handled their case. It's also clear that their dissatisfaction and the impact these things have had on them covers the period before October 2021.

Nevertheless, I think Fairmead, in the period between October 2021 and June 2022 could have done better. They have a duty to handle claims promptly and effectively. As I've said, the contacting and chasing of Firm D doesn't appear to have happened pro-actively. Mr J was therefore inconvenienced by needing to chase updates after deadlines he'd been given had passed without any contact, and they were upset by being unsure what Fairmead was doing to progress the claim.

In order to recognise the distress and inconvenience caused by the poor handling of the claim between October 2021 and June 2022, I think Fairmead should pay £250 compensation to Mr and Mrs J. I'm satisfied that this is a fair amount for the impact on Mr and Mrs J during that period caused by the delays and lack of communication.

My final decision

It's my final decision to uphold this complaint in part. In order to put things right, Fairmead Insurance Limited must pay £250 compensation to Mr and Mrs J.

Fairmead Insurance Limited must pay this amount within 28 days of us telling it that Mr and Mrs J accept our decision. If it does not, it must simple interest on this amount at a rate of 8% from that date until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 6 March 2023.

Ben Williams
Ombudsman